



RESPONSE TO COMMENTS

Received on the
APPLICATION AND DRAFT PERMIT
for the

WASATCH REGIONAL CLASS V LANDFILL TOOELE COUNTY

A 30-day public comment period on the proposed Wasatch Regional Class V Landfill permit application and draft permit ended February 17, 2005. A public hearing was held at the Tooele County Health Department Auditorium, at 7:00 PM on Tuesday, February 8, 2005. The Division of Solid and Hazardous Waste's (Division) responses to the comments received during the public comment period are provided below.

The reader should bear in mind that the responses to each comment are based on the Division's responsibility to implement the requirements contained in the *Utah Solid Waste Permitting and Management Rules* (Rules) and the *Utah Solid and Hazardous Waste Act* (Act).

VERBAL COMMENTS

No verbal comments were received during the public hearing.

WRITTEN COMMENTS

Comment #1:

In section II-A of the draft permit, the requirement to meet the archeological requirements of R315-302(2)(a)(vi) is noted. This was added into the draft permit due to comments made during the Class I public comment period. At that time, it became somewhat unclear whether or not the Utah State Historic Preservation Office (SHPO) had considered the entire site or not. The attached letter dated January 14, 2005 has been issued from Mr. James Dykmann, Deputy State Historic Preservation Officer-Archaeology. Mr. Dykman indicated that his original letter of June 12, 2003 did "indeed include the 2,000-acre area of potential effect." This should be sufficient to meet the requirements of R315-302(a)(vi). As such it is proposed that this requirement be removed from the draft permit.

Response:

The draft permit contains language in Section A-II, to ensure the landfill is not located in an area with respect to archeological sites that would violate Utah Code Annotated

(UCA) 9-8-404 as required by Utah Administrative Code (UAC) R315-302-1(2)(a)(vi). Specifically, the draft permit states:

Prior to construction, the permittees must submit documentation that demonstrates the landfill site complies with the archeological requirements of Section R315-302(2)(a)(vi) UAC. Construction of the landfill may not begin until the Executive Secretary has approved the documentation and determined that the site complies with the requirements of the Rule.

The Division has reviewed the letter dated January 14, 2005, from Mr. James Dykmann, Deputy State Historic Preservation Officer- Archeology, (tracking #05.00437) which declares, the original evaluation did include the entire 2,000-acre area of potential effect (landfill site).

Determination:

The January 14, 2005 letter from Mr. Dykmann satisfies the requirements of Section R315-302(2)(a)(vi) of the Rules. The provision of Section II-A, relating to additional documentation to meet the archeological siting requirements, has been removed from the final permit. The letter from Mr. Dykmann has been added to the Appendix 2.3 of the permit application.

Comments #2, 3, and 4 question the need for additional landfills within Utah.

Comment #2

Dear Sirs: I wish to present my opposition to the construction of an additional non-hazardous waste landfill in Tooele County. East Carbon City has a non-hazardous landfill that has been in existence for a number of years and has the capacity and capability to continue operations for many years to come. An additional landfill of this kind is not necessary to the State and particularly to Carbon County and East Carbon City and its neighboring community of Sunnyside. Tippage fees that are collected by the City are used to pay the loans, which were made possible to modernize the infrastructure of the city and bring for the first time, the availability of natural gas. In contrast, Tooele County according to all reports that I have read is one of the fastest growing counties in the State. . . . It is my belief the construction of an additional landfill would have a ripple effect on further downsizing the economic situation in East Carbon City in particular and more generally in Carbon County. And finally, how many land fills do we need in Utah? I would hope that any further movement to begin the construction of another landfill in this State to handle non-hazardous waste is seriously reconsidered. I don't believe it to be necessary and I don't believe the State should further dot its landscape with more landfills. We have several now. The one here in East Carbon provides jobs and in my opinion is maintained properly. Another one is not of importance.

Comment #3

I am aware that Utah already has a Class V landfill in Price that has almost limitless capacity and that already receives thousands of tons of out-of-state waste. We do not need another such site in our state.

Comment #4

I have recently found out about the new landfill opening on the Wasatch front. I own a home in the East Carbon area and have lived here all my life. The new landfill is a real threat to the well being of our small community. The ECDC landfill supports our community and the county with tippage fees. The people who work there live mostly in East Carbon & Sunnyside. Their income supports our schools and the businesses in our community. The Wasatch regional landfill will be operated by the same company (Allied Waste) and they will not keep ECDC open. This could be disastrous to our community. Please think carefully about opening a new landfill when ECDC is so important to our area.

Response:

Neither the statute nor administrative rules explicitly limit the number of landfills that may receive a permit. Rather, the Rules require each landfill to meet the siting criteria, which are in place to protect public health and the environment. However, Class V landfill applications are required by the Act to provide evidence that the proposed commercial facility has a proven market of nonhazardous solid waste. The evidence must include a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid waste in the state and regionally. The evidence must also include a description of the public benefits of the proposed facility. *Appendix 1.4- Class V Needs Assessment Report* (Report) of the landfill application addresses the evidence that is required by the Act. The Report evaluated projected growth rates along the Wasatch Front, and tipping fees across the region. The report states:

The proposed Wasatch Regional Solid Waste Landfill can help meet these needs [projected growth in waste production] by providing new landfill capacity, as well as by diverting trash streaming to existing facilities and extend the capacity of these facilities.

The public schools of Utah will also benefit from the unique arrangement that Wasatch Regional Landfill has with the State Institutional Trust Lands Administration (SITLA). As part of this arrangement SITLA receives 7-9% of the gross income from tipping fees. ... This money will be distributed statewide for State schools and capital facilities.

The Act declares that the executive secretary may not approve a commercial nonhazardous solid waste facility unless, based on the application, the Executive Secretary determines that there is a need for the facility to serve industry within the state.

Determination:

The review of the landfill application has determined that the siting criteria contained in the Rules have been met. In addition, the *Needs Assessment* contained in the application demonstrated the viability of the proposed landfill and addressed the public benefit. The submitted *Needs Assessment* satisfies the requirements of the Act.

Comment #5

It is my understanding that the proposed landfill is located adjacent to a railroad spur. While on the surface this would potentially appear to be a benefit, there are likely very negative consequences that will result if the application is approved. A Class V landfill permits the receipt of out-of-state waste. I have followed with interest the ongoing public discussion relating to out-of-state substances being located in Utah. While I understand that a landfill may be viewed as a necessary evil to address waste concerns in our own state, we certainly should not be a dumping ground for other states. Whatever revenues the State may receive from such a dump cannot justify the import of thousands or millions of tons of waste from other states. It strikes me that a rather irreconcilable conflict exists between the State's publicly-expressed desire to recruit tourism and a law that would allow our State to become further known as the dumping ground for someone else's garbage.

Response:

By definition, a Class V landfill is not limited to intrastate sources of solid waste and therefore may accept waste from outside Utah. The application demonstrates compliance with the applicable provisions of the Rules and the Act. Issues such as the effect of the facility on tourism are not within the scope of the Division's statutory or regulatory authority. Additionally, the U.S. Supreme Court has determined that solid waste is an article of commerce protected by the interstate commerce clause of the U.S. Constitution. Therefore states, until authorized by Congress, cannot prohibit or ban the importation of solid waste into the state.

Determination:

No change to the permit or related action is required by the Executive Secretary of the Solid and Hazardous Waste Control Board.

Comment #6

It is my understanding that the proposed Class V landfill is currently permitted as a Class I landfill but has never operated as a Class I landfill. If the State at some point determines that another Class V landfill is prudent or necessary, it would seem a much more reasonable approach to have the landfill operate as a Class I landfill, monitor its performance, and make a decision in the future regarding Class V status after performance has been modified and should the time come that another such landfill is needed.

Response:

Prior to submitting the Class V permit application, Wasatch Regional Solid Waste Management Corporation submitted a Class I permit application for the same site. The Class I permit application review process, including public comment, was completed and a Class I permit was issued on January 21, 2005. The Class V landfill permit application is identical to the Class I permit with the addition of the information required by UCA 19-6-108(10), which was provided in the Needs Assessment Report, Appendix 1.4 of the application. The only difference in the operation between the Class I and Class V landfill is the source of the waste. The design and operating standards and monitoring requirements are the same whether the facility is a Class I or a Class V landfill. It is the permit applicant that made the decision to seek a Class V permit. The application met all the requirements of the rules and statute and, therefore, received approval.

Determination:

Both permits will not remain in effect. If the Legislature and Governor approve the Class V permit, the Class I permit will be revoked. If the Class V permit does not receive legislative and gubernatorial approval, the facility will not be able to operate under the Class V permit.

Comment #7

We are concerned that placing a large 2,000-acre solid waste landfill in proximity to Great Salt Lake and the groundwater beneath supports an attitude that the Lake is a dump and its shorelands are useless as open space. We hope that with time and changing attitudes this type of activity will not be permitted within proximity to Great Salt Lake. We also understand that the selection of this location is not part of your jurisdiction.

Response:

The commenter's concern for the Great Salt Lake and surrounding area has been noted; however, the commenter also recognized the Division's lack of jurisdiction over the site selection and therefore does not have authority to set land use policies or priorities.

Determination:

No change to the permit or related action is required by the Executive Secretary of the Solid and Hazardous Waste Control Board.

Comment #8

We understand that there will be future public commenting opportunities on revisions to the WRSWMC application proposal. Such revisions might include changes in the physical contour of the landfill, redesigns of the leachate system, and even the possibility of changing the mode of waste transport from trucks to rail. We would appreciate timely notification of such opportunities so that we can be involved in that process.

Response:

Once a landfill permit application is received, the Division begins its review of the application. Due to the complexity and depth of the Rules, the typical application review process includes several exchanges and clarifications of information between the applicant and the Division. The permit application review process continues until the Division determines the application is complete—that is, properly addresses all applicable requirements. Once the application is complete, the Rules require a public notice requesting public comment of the application and draft permit as it relates to the Rules and Act.

The Division will provide proper notification of public comment periods associated with any modifications to the original permit and will make all reasonable efforts to see that all interested parties are aware of the comment period.

Determination:

No change to the permit or related action is required by the Executive Secretary of the Solid and Hazardous Waste Control Board.

Comment #9

We also understand that WRSWMC is tending to sell the permit to Allied Waste, Inc., which currently owns and operates the ECDC Commercial Landfill facility in East Carbon. And that this new facility will be competing with landfill operations that already exist along the Wasatch Front, targeting many of the same clients. The recently permitted Promontory Point Landfill facility in Box Elder County would be among those competitors. And that Allied Waste, Inc. could feasibly consider closing the ECDC facility in East Carbon; concentrating its waste management efforts in the Rowley location.

This raises a philosophical question about landfill use practices within the region and why permits for landfill facilities within growing metropolitan areas are issued without the benefits of long term strategic planning. We realize that is not the responsibility of the Division of Solid and Hazardous Waste to make land use decisions. However, as an organization that is working to preserve and protect hemispherically important ecosystem, we find this trend to be disturbing.

Response:

The commenter is correct regarding the responsibility for long-term strategic planning, in terms of land use issues, is outside the Division's statutory and regulatory authority.

Determination:

No change to the permit or related action is required by the Executive Secretary of the Solid and Hazardous Waste Control Board.